

Amendment No. 1 to HB0126

Brooks H  
Signature of Sponsor

**AMEND Senate Bill No. 161\***

**House Bill No. 126**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding the following language as a new part:

**49-1-1201.**

This part shall be known and may be cited as the "Opportunity Scholarship Pilot Program."

**49-1-1202.**

(a) There is established a five-year pilot program for the LEA having the most schools identified on the priority list, as defined by the state's accountability system pursuant to § 49-1-602 and shall include schools in the achievement school district that are located in that district's geographic footprint. The pilot program shall begin in the 2018-2019 school year.

(b) The pilot program must be monitored and evaluated by the office of research and education accountability (OREA) in the office of the comptroller of the treasury. OREA, with the assistance of the department of education and the state board of education, shall study the pilot program and report to the general assembly by December 31 on the effectiveness of the program after the second and fourth full school years of the program and at the conclusion of the pilot program. OREA shall determine, in compliance with all state and federal student privacy laws, student achievement and growth information for scholarship recipients for each participating school, which shall include:

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- (1) Achievement results, including student growth;
- (2) The graduation rate, as applicable;
- (3) The retention rate; and
- (4) Any other information deemed important to evaluate the program.

**49-1-1203.**

As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of education;
- (2) "Eligible student" means a student who:

(A)

(i) Resides in the LEA in which the pilot program is established according to § 49-1-1202, is zoned to attend, or is currently enrolled in a public school within the LEA that, at the time of the student's initial application for a scholarship, is identified as being in the bottom five percent (5%) of schools in performance as determined by the state board pursuant to § 49-1-602; or

(ii) Resides in the LEA in which the pilot program is established according to § 49-1-1202, if the number of scholarships pursuant to § 49-1-1208(a) are not reached;

(B) Meets the minimum age requirements specified in § 49-6-3001, with eligibility extending until the student graduates from high

school; however, the student must be less than twenty-two (22) years of age by August 15 of each year;

(C) Is a member of a household whose annual income during the year prior to the request for participation in the program met the requirements for free or reduced price lunch as determined by the department;

(D) Meets at least one (1) of the following requirements:

(i) Was previously enrolled in a Tennessee public school during the one (1) full school year immediately preceding the school year in which the student receives an opportunity scholarship for the first time; or

(ii) Is attending a Tennessee school for the first time; and

(E) Does not participate in the Individualized Education Account program pursuant to chapter 10, part 14 of this title;

(3) "LEA" means the school system having the most schools identified on the priority list, as defined by the state's accountability system pursuant to § 49-1-602 and includes schools in the achievement school district that are located in that district's geographic footprint;

(4) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under § 49-6-3001;

(5) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(6) "Program" means the opportunity scholarship program created by this part;

(7) "Scholarship" means the funds awarded to a parent on behalf of an eligible student or an eligible student who has achieved the age of majority pursuant to this part;

(8) "Scholarship student" means an eligible student who is awarded, or whose parent is awarded, a scholarship pursuant to this part;

(9) "State board" means the state board of education; and

(10) "Tuition and fees" means the cost of educating an enrolled student, inclusive of any cost required as a condition of attending the participating school and using its equipment or facilities while participating in or receiving educational training. "Tuition and fees" includes operational and facility costs, transportation costs, meal costs, and any additional costs associated with attending the participating school.

**49-1-1204.**

(a) A participating school shall:

(1) Voluntarily agree to participate in the program and accept applications from eligible students pursuant to this part;

(2) Provide notice, on an annual basis, of intent to participate in the program to the department through completion of an application developed by the department. The notice must include the number of available seats by grade level;

(3) Be identified as a category I, II, or III school pursuant to department procedures and state board rules and comply with all health and safety laws or codes that are applicable to the schools;

(4) Annually administer to scholarship students the same state-mandated assessments in grades three through twelve (3-12) that are administered by the LEA in which the program is located;

(5) Provide the parents of scholarship students the results of their individual student's annual assessments and provide the department with the results of the individual scholarship student's annual assessments;

(6) In addition to the information derived from the requirements of subdivision (a)(4), provide the department with graduation rates of scholarship students as well as other student information allowing for the aggregation of data as determined and required by the department;

(7) Comply with nondiscrimination policies pursuant to 42 U.S.C. § 1981 and otherwise abide by the school's written admission policy with regard to students who are awarded scholarships under this part. If a scholarship student is not successfully enrolled in a school, the student remains eligible to enroll in another participating school;

(8) Not discriminate against students with special education needs who meet the requirements for admission to the school during the enrollment admissions process; however, as a nonpublic school, a participating school is required to offer only those services it already provides to assist students with special needs. If a scholarship student would have been entitled to receive special education services in the public school the student would otherwise be attending, the parent must acknowledge in writing, as part of the enrollment process, that the parent agrees to accept only services available to the student in the nonpublic school. A participating school may contract with the LEA or partner with other participating schools to provide special education services. A parent of a student with special education needs shall qualify to participate in the program if the parent signs an agreement not to enroll the parent's student with special education needs in a public school and to release the LEA in which the student resides and is zoned to attend from all obligations to educate the student

during participation in the scholarship program. Participation in the program has the same effect as a parental refusal to consent to the receipt of services under 20 U.S.C. § 1414 of the Individuals with Disabilities Education Act (IDEA);

(9) Accept the scholarship amount as payment in full for the cost of tuition and fees that would otherwise be charged by the school;

(10) Allow scholarship students to remain enrolled in the school for the duration of the school year at no additional cost if the school withdraws from the program during the school year;

(11) Submit, if requested, to the department a financial audit of the school conducted by a certified public accountant; however, the audit may be limited in scope to records necessary for the department to make scholarship payments to the school. The audit must include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the department to be received or expended in a manner inconsistent with this part must be returned to the state;

(12) Demonstrate financial viability to repay any funds that may be owed to the state by filing with the department, prior to the start of the school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this subdivision (a)(12) by filing a bond payable to the state from a surety, and in an amount determined by the department;

(13) Require any person serving as a teacher or any other position requiring close proximity to children to submit to a criminal background check pursuant to the rules of the state board; and

(14) Comply with § 49-5-202.

(b) Participation in the program by a school is voluntary and nothing in this part authorizes any additional regulation of participating schools beyond that specifically authorized by this title. A school participating in the program is not considered a state actor, or agent of the state or federal government, by virtue of its participation in this program.

(c) It is the intent of the state that the amount of a scholarship awarded to a scholarship student not be treated as income or an asset when determining an individual's taxes or qualification for any other federal or state scholarship or program.

**49-1-1205.**

(a) The department shall develop procedures necessary for administering the program. In administering the program, the department shall:

(1) Require the LEAs to provide the department with the names and physical addresses of the parents of eligible students;

(2) Provide notice to parents of student eligibility and of participating schools;

(3) Accept applications from parents of eligible students and award scholarships to eligible students;

(4) Determine and approve school and student eligibility and participation pursuant to the requirements of this part. If the number of eligible students who submit applications exceeds the permissible number of scholarships available in the program, the department must conduct a random selection process to award scholarships that provides each eligible student with an equal opportunity for selection. The department shall give preference to students participating in the program who are already enrolled in the participating school and to siblings of such students;

(5) Establish application and participation timelines that will maximize student and school participation;

(6) Remit scholarship payments to participating schools on behalf of scholarship recipients; however, any scholarship awarded under this part is the entitlement of the eligible student under the supervision of the student's parent and shall not be the entitlement of any participating school;

(7) Annually publish, in compliance with all state and federal student privacy laws, information for scholarship recipients for each participating school, which shall include all of the following:

(A) Achievement results, including student growth;

(B) The graduation rate, as applicable; and

(C) The retention rate; and

(8) Shall make information available on the department's website to inform parents of eligible students of all available scholarship options and provide an opportunity for parents to apply to other participating schools.

(b) The department may suspend or terminate a school's participation in the program if the department determines the school has failed to comply with this part. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program, or if the school otherwise withdraws from the program, scholarship students enrolled at the school may transfer to another participating school without loss of scholarship eligibility.

(c) Except as provided in subsection (b), an eligible student is entitled to one (1) scholarship per school year; as long as the award of the scholarship does not exceed the limitation on the number of scholarships that may be awarded under § 49-1-1208(a).



If a student is expelled from a participating school, then the student's participation in the scholarship program shall be terminated.

(d) In compliance with all state and federal student privacy laws, the LEA, in a timely manner, shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

(e) The names or any other information that alone, or in combination, could personally identify specific scholarship recipients must be treated as confidential and not be open to the public. Nothing in this part prevents the department, state board, or participating schools from accessing and utilizing such records as required to fulfill their lawful functions.

(f) If a participating student leaves the program and reenrolls in an LEA, then the student shall be immediately included in enrollment for the purposes of generating BEP funds pursuant to part 3 of the title.

**49-1-1206.**

(a) If a participating school's most recent measure of student achievement growth for scholarship students is, in the aggregate, at a level of "below expectations" or "significantly below expectations" as represented by the value added assessment system developed pursuant to part 6 of this chapter, then the school shall not continue to enroll additional eligible students throughout the program.

(b) If a participating school demonstrates achievement growth for scholarship students, in the aggregate, at a level of "significantly below expectations" for two (2) consecutive years, as represented by the value added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter, the commissioner shall suspend or terminate the school's participation in the program. If the department suspends or terminates the

school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program pursuant to this subsection (b), scholarship students enrolled at the school may transfer to another participating school without loss of eligibility, and the students shall be given preference for enrollment.

**49-1-1207.**

(a) Notwithstanding subsection (e), the annual amount to which an eligible student is entitled under this part is equal to the lesser of the following:

(1) The cost of tuition and fees that would otherwise be charged by the school; or

(2) The amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the program is established.

(b) For the purposes of funding calculations, all scholarship recipients shall be counted in the enrollment figures for the LEA in which the program is established. The scholarship funds must be subtracted from the total state funds otherwise payable to the LEA and be paid directly to the participating school.

(c) If the participating school's cost of tuition and fees is less than the amount outlined in subdivision (a)(2), the remaining funds shall be retained by the LEA in which the program is established.

(d) The department shall develop a schedule for payments of scholarship funds to participating schools. If a participating student is enrolled in a participating school for less than the entire school year, the participating school shall refund the scholarship provided under this part on a prorated basis to reflect the shorter school term. A participating school shall not refund, rebate, or share scholarship funds with a parent or participating student in any manner.

(e) If the federal government makes funds available for use by states for scholarship purposes that Tennessee is eligible to receive, then the department shall apply for and use, in accordance with federal laws and regulations, any funds distributed for scholarship purposes by the federal government to the state and shall establish a separate and independent program to distribute those funds. Participation by participating schools in any federally funded program is voluntary and otherwise meets the requirements of this part.

**49-1-1208.**

(a) The total number of scholarships awarded by the program is limited as follows:

(1) For the 2018-2019 school year, the department shall award no more than two thousand five hundred (2,500) scholarships; and

(2) For the 2019-2020 through the 2022-2023 school years, the department shall award no more than five thousand (5,000) scholarships in each school year.

(b) The department shall develop procedures to allocate scholarships among eligible students if the number of scholarships provided in subsection (a) are not met.

**49-1-1209.**

The state board is authorized to promulgate rules to effectuate the purposes of this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**49-1-1210.**

(a) Except as otherwise provided in this section, the pilot program terminates at the conclusion of the 2022-2023 school year.

(b)

(1) Scholarship students receiving awards in the 2022-2023 school year shall remain eligible to continue to receive scholarships in subsequent school years under the program until the earlier of:

- (A) Graduation from high school;
- (B) Voluntary withdrawal from the program;
- (C) Achieving the age of twenty-two (22) before August 15 of any given year; or
- (D) Becoming ineligible under any other provision of the program.

(2) The department shall continue to administer the program for scholarship students participating in the program pursuant to subdivision (b)(1).

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 3. If any part of this act is challenged in a Tennessee court as violating either the state or federal constitutions, parents or participating students shall be permitted to intervene in the lawsuit for the purposes of defending the act's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.